IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.568 OF 1987

Bhaskar Dnyanu Patil
age 56 years, Occ.Agriculturist
Yedemachindra, taluka Walwa,
Dist. Sangli .. Appellant.

Vs.

1. Krishna Rama Yadav
age 55 years, resident of
Yedemachindra, taluka Walwa,
Dist. Sangli ..
2. Kashinath Dattu Jangam
age 55 years, Occ.Agriculturist
Yedemachindra, taluka Walwa,
Dist. Sangli ..
3. Ananda Dattu Jangam
age 35 years, Occ.Agriculturist
Yedemachindra, taluka Walwa,
Dist. Sangli .. Respondents.

Mr.Abhijit Kulkarni for the appellant.
Mr.B.G.Vaidya for respondent no.1.

CORAM : D.B.BHOSALE, J.
DATED : 6TH FEBRUARY, 2007

ORAL JUDGMENT:

. The concurrent judgments of the courts below, decreeing the suit instituted by the respondent-plaintiff for perpetual injunction and in the alternative for possession of the suit land admeasuring 14 gunthas out survey no.316/1 (for short "suit land"), are under challenge in the instant appeal.

2. Ananda Dattu Jangam - defendant no.3, was the owner of survey no.316 admeasuring 6 acres and 11 gunthas. In 1956, respondent no.1 - plaintiff purchased the southern portion of survey no.316 admeasuring 2 acres by a registered sale deed dated 29.5.1956. On 30th March, 1966, the plaintiff further purchased 2 annas and 11 pie share from survey no.316 by another registered sale deed. The exact acreage and the boundaries were not mentioned in the second sale deed. On 24th May, 1966 defendant no.3, therefore, executed a document making it clear the exact area of land sold under the sale deed dated 30.3.1966. It appears that survey no.316 was thereafter divided in two survey numbers, namely, survey no.316/1 and 316/2. The appellant - defendant no.1 purchased 13 annas and 1 pie out survey no.316/1 by the registered sale deed dated 5.2.1968. Even in this sale deed, executed in favour of defendant no.1, the exact acreage and the boundaries were not mentioned. The question, therefore, arose before the courts below was as to what was the exact area transferred by defendant no.3 in favour of defendant no.1 by the registered sale deed dated 5.2.1968 as also in favour of the plaintiff by the registered sale deed dated 30.3.1966. According to defendant no.1 by the registered sale deed dated 30.3.1966 only 31 gunthas were transferred and not 1 acre and 5 gunthas

as claimed by the plaintiff. That is how there is a difference of 14 gunthas in the calculation made by the plaintiff and defendant no.1 and hence this suit was instituted by the plaintiff for injunction and in the alternative for possession of the suit land.

3. I heard learned counsel for the parties and perused the impugned judgments as also other material to which my attention was specifically drawn by the learned counsel for the parties. Mr.Kulkarni, learned counsel for the appellant submitted that the appellant is bonafide purchaser of 3 acres and 20 gunthas out of 4 acres and 11 gunthas land bearing survey no.316/1 which is equal to 13 annas and 1 pie of the land out of survey no.316. He submitted that the appellant was put in possession of 3 acres and 14 gunthas of land out of survey no.316/1 and he has been in continuous possession thereof for several years since before filing of the suit. While purchasing the land he had taken all the care by taking search of the record of rights wherein no entry was affected in favour of the plaintiff in respect of the suit land which forms the part of the land purchased by him admeasuring 3 acres and 20 gunthas. Even the mutation entry to that effect was certified and it was never challenged by the plaintiff. He, therefore, submitted that the plaintiff is now estopped from claiming any right over

the suit property. He invited my attention to the sale deed dated 5.2.1968 executed in favour of the appellant to submit that there is no ambiguity and in view thereof the courts below were wrong in decreeing the suit. He did not raise any other contention.

4. I perused both the judgments very carefully. It is clear that initially out of 6 acres and 11 gunthas, 2 acres of land and by another sale deed dated 30.3.1966, 2 annas and 11 pie share was purchased by the plaintiff. The sale deed dated 30.3.1966 does not make reference to the acreage of the land purchased by the plaintiff or to the boundaries and in view thereof it appears that on 24th May, 1966, that is, within less than two months the document at Exhibit-42 was executed by defendant no.3, the owner of the land, clarifying the extent of the land sold by him by the sale deed dated 30.3.1966. By the said document dated 24.5.1966, defendant no.3 made it clear that 2 annas and 11 pie means 1 acre and 5 gunthas and thereby cleared the ambiguity left in the sale deed dated 30.3.1966. Two years thereafter defendant no.3 executed the sale deed in favour of defendant no.1 to the extent of 13 annas and 1 pie out of survey no.316/1 and seem to have put defendant no.1 in possession thereof. The dispute arose in view of mentioning of the share, that is, annas and pie, and

not the exact acreage in both the sale deed dated 30.3.1966 and 5.2.1968. In the circumstances the courts below on appreciation of the evidence on record have recorded a categoric finding that what was sold to the plaintiff by the sale deed dated 30.3.1966 was 1 acre and 5 gunthas and not 31 gunthas as claimed by the appellant. For recording this finding of fact both the courts below have relied upon the document at Exhibit-42 dated 24.5.1966 as also the rate per acre agreed between the parties, which tallies with the case made out by the plaintiff. I find absolutely no reason to interfere with the findings of fact which clearly demonstrates that defendant no.2 had initially sold 2 acres of land in 1956 and thereafter 1 acre and 5 gunthas of land by the sale deed dated 30.3.1966. I find sufficient material on record to sustain the findings recorded by the courts below and in any case they cannot be termed as perverse. The submissions of Mr.Kulkarni, learned counsel for the appellant, in the facts and circumstances of this case and the concurrent findings recorded by the courts below deserves to be rejected. It cannot be said that the plaintiff was estopped from claiming possession of the suit property in view of the fact that admittedly, the appellant is not claiming ownership over the suit property by adverse possession. In the circumstances this appeal deserves to be dismissed.

5. At this stage Mr.Vaidya, learned counsel for respondent no.1 invited my attention to the judgment of this court in **Sidagonda Vs. Bhimgonda 2002(2) Mh.L.J. 623** and submitted that the plaintiff may be given liberty to approach the Consolidation Officer for seeking appropriate relief in view of the decree in the present suit. Keeping the judgment of this court in the case of **Sidagonda** (supra) in view the respondent-plaintifff shall have liberty to approach the Consolidation Officer under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act for appropriate relief, if necessary, in view of the decree in the present suit. It is also open for the plaintiff to approach the Revenue authorities for affecting necessary entries in the record of rights. In the circumstances this appeal is dismissed. No orders as to costs.

(D.B.Bhosale, J.)